



## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

#### 7 CFR Part 3565

[Docket No. RHS-19-MFH-0024]

RIN: 0575-AD31

### Section 538 Guaranteed Rural Rental Housing Program Change in Priority Projects

#### Criteria

**AGENCY:** Rural Housing Service, Department of Agriculture (USDA).

**ACTION:** Proposed Rule.

**SUMMARY:** The Rural Housing Service (RHS or the Agency), a Rural Development agency of the United States Department of Agriculture (USDA), proposes to amend the current regulation for the Multifamily Family Housing (MFH) Section 538 Guaranteed Rural Rental Housing Program (GRRHP). The intent of this proposed rule is to align the current criteria of priority projects with the Housing Act of 1949. This change is expected to improve the customer experience with more timely and proactive responses to housing market demands and Administration priorities.

**DATES:** Comments on the proposed rule must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Comments may be submitted electronically by the Federal eRulemaking Portal: Go to <https://www.regulations.gov> and, in the “Search Field” box, labeled “Search for Rules, Proposed Rules, Notices, or Supporting Documents,” enter the following docket number: **(RHS-19-MFH-0024)** or RIN# 0575-AD31. To submit or view public comments, click the “Search” button, select the “Documents” tab, then select the following document title: **(Rural Rental Housing Change in Priority Projects Criteria)** from the “Search Results,” and select the “Comment” button. Before inputting your comments, you may also review the “Commenter’s

Checklist” (optional). Insert your comments under the “Comment” title, click “Browse” to attach files (if available). Input your email address and select “Submit Comment.” Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “FAQ” link.

Other Information: Additional information about Rural Development and its programs is available on the internet at <https://www.rurdev.usda.gov/index.html>.

All comments will be available for public inspection online at the Federal eRulemaking Portal (<https://www.regulations.gov>).

**FOR FURTHER INFORMATION CONTACT:** Tammy Daniels, Finance and Loan Analyst, Multi-Family Housing Production and Preservation Division, Rural Housing Service, United States Department of Agriculture, STOP 0781, 1400 Independence Avenue, SW, Washington, DC 20250-0781, Telephone: (202) 720-0021 (this is not a toll-free number); e-mail: [tammy.daniels@usda.gov](mailto:tammy.daniels@usda.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The RHS offers a variety of programs to build or improve housing and essential community facilities in rural areas. RHS offers loans, grants, and loan guarantees for single- and multifamily housing, childcare centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, housing for farm laborers. RHS also provides technical assistance loans and grants in partnership with non-profit organizations, Indian tribes, state and federal government agencies, and local communities.

RHS administers the Section 538 Guaranteed Rural Rental Housing Program (GRRHP) under the authority of the Housing Act of 1949, as amended (42 U.S.C. 1490p–2). Under the GRRHP, RHS guarantees loans for the development of housing and related facilities in rural areas.

As mandated by Title V of the Housing Act of 1949, the Agency must give priority to rural areas in which borrowers can best use and need guaranteed loans. 42 U.S.C. 1490p-2(l)(2). 7 CFR 3565.5(b) currently defines “priority projects” as those: in smaller rural communities, in the neediest communities having the highest percentage of leveraging, having the lowest interest rate, having the highest ratio of 3-to-5-bedroom units to total units, or on tribal lands. Some of these specific priorities are no longer relevant.

## **II. Discussion of the Proposed Rule**

RHS is issuing a proposed rule to amend the MFH GRRHP regulation, 7 CFR 3565.5(b) to align the current criteria of priority projects with 42 U.S.C. 1490p-2(l)(2).

Amendments proposed in this rule are designed to increase the supply of affordable rural rental housing by using loan guarantees to encourage partnerships between the RHS, private lenders, and public agencies. 7 CFR part 3565 sets forth the regulation requirements for the GRRHP which prescribes the policies, authorizations, and procedures for the guarantee of multifamily loans authorized by Section 538, Title V, of the Housing Act of 1949. The GRRHP uses priority points to rank and score applications that are based on criteria that frequently evolve and change depending on the housing market demands, as well as current and future Administrations’ priorities. Currently, 7 CFR 3565.5(b) does not afford the flexibility the Agency requires in its decision making to fully address these evolving priorities without a regulatory change to the priority-points scoring criteria.

This proposed rule is intended to improve the customer experience with more timely and proactive responses to housing market demands without frequent regulatory changes. This is expected to be accomplished by providing the much-needed flexibility required in the Agency’s decision making to fully address evolving priorities in the housing market demands, as needed, as well as current and future Administrations’ priorities. The Agency would also be in a stronger position to meet the current and future demands of the housing market, which ultimately would allow the Agency to be more responsive to the needs of the program’s rural stakeholders.

### **III. Summary of Changes**

The proposed changes would amend 7 CFR 3565.5(b) to offer flexibility by aligning the current criteria of priority projects with 42 U.S.C. 1490p-2(l)(2) to be more timely and responsive to developing demands in the rural housing market, as well as evolving priorities with current and future Administrations, while improving its customers' experience with the program.

The Agency would also be in a stronger position to meet the current and future demands of the housing market, which ultimately would allow the Agency to be more responsive to the needs of the program's rural stakeholders.

### **IV. Regulatory Information**

#### **Statutory Authority:**

The RHS administers the 538 Guaranteed Rural Rental Housing Program (GRRHP) loans under the authority of the Housing Act of 1949, as amended (42 USC § 1490p-2(l)(2)) and operates under 7 CFR part 3565.

#### **Executive Order 12372, Intergovernmental Review of Federal Programs**

These loans are subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. RHS conducts intergovernmental consultations for each loan in accordance with 2 CFR part 415, subpart C.

#### **Executive Order 12866, Regulatory Planning and Review**

This proposed rule has been determined to be non-significant and, therefore, was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

#### **Executive Order 12988, Civil Justice Reform**

This proposed rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) Unless otherwise specifically provided, all State and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals

Division of the Department of Agriculture (7 CFR part 11) must be exhausted before suing in court that challenges action taken under this proposed rule.

### **Executive Order 13132, Federalism**

The policies contained in this proposed rule do not have any substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. This proposed rule does not impose substantial direct compliance costs on State and local Governments; therefore, consultation with States is not required.

### **Executive Order 13175, Consultation and Coordination with Indian Tribal Governments**

This Executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the proposed rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this proposed rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this rule, they are encouraged to contact USDA's Office of Tribal Relations or RD's Native American Coordinator at: [AIAN@usda.gov](mailto:AIAN@usda.gov) to request such a consultation.

### **National Environmental Policy Act**

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, "Environmental Policies." RHS determined that this action does not constitute a major Federal action significantly affecting the quality of the environment. In accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

### **Regulatory Flexibility Act**

This proposed rule has been reviewed with regards to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature

on this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

### **Unfunded Mandate Reform Act (UMRA)**

Title II of the UMRA, Public Law 104-4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal Governments and on the private sector. Under section 202 of the UMRA, Federal Agencies generally must prepare a written statement, including cost-benefit analysis, for proposed and Final Rules with "Federal mandates" that may result in expenditures to State, local, or tribal Governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires a Federal Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal Governments or for the private sector. Therefore, this rulemaking is not subject to the requirements of sections 202 and 205 of the UMRA.

### **Paperwork Reduction Act**

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575-0189. This proposed rule contains no new reporting and recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

### **E-Government Act Compliance**

RHS is committed to complying with the E-Government Act by promoting the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information, services, and other purposes.

## **Civil Rights Impact Analysis**

Rural Development has reviewed this rulemaking in accordance with USDA Regulation 4300-4, Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, disability, sex, gender identity (including gender expression), genetic information, political beliefs, sexual orientation, marital status, familial status, parental status, veteran status, religion, reprisal and/or resulting from all or a part of an individual's income being derived from any public assistance program. After review and analysis of the rule and available data, it has been determined that implementation of the rule is not likely to adversely, or disproportionately, impact very low, low- and moderate-income populations, minority populations, women, Indian tribes, or persons with disability by virtue of their race, color, national origin, sex, age, disability, or marital or familial status. No major civil rights impact is likely to result from this proposed rule.

## **Assistance Listing**

The program affected by this regulation is listed in the Catalog of Federal Domestic Assistance under numbers 10.438 – Rural Rental Housing Guaranteed Loans (Section 538).

## **Non-Discrimination Statement**

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information

(e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.ocio.usda.gov/document/ad-3027>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

- (1) Mail: U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410; or
- (2) Fax: (833) 256-1665 or (202) 690-7442; or
- (3) Email: [Program-Intake.@usda.gov](mailto:Program-Intake.@usda.gov)

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### **List of Subjects in 7 CFR Part 3565**

Conflict of interest, Credit, Fair housing, Loan programs-housing and community development, Low and moderate-income housing, Manufactured homes, Mortgages, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

For the reasons discussed in the preamble, the Agency is proposing to amend 7 CFR part 3565 as follows:

### **PART 3565 – GUARANTEED RURAL RENTAL HOUSING PROGRAM**

1. The authority citation for part 3565 continues to read as follows:



**Authority:** 5 U.S.C. 301; 7 U.S.C 1989; 42 U.S.C. 1480.

2. Amend § 3565.5 by revising paragraph (b) to read as follows:

**§ 3565.5 Ranking and selection criteria**

\* \* \* \* \*

(b) Priority will be given to projects in rural areas in which borrowers can best utilize and where loan guarantees are needed the most, as determined by the Agency based on information the Secretary considers appropriate. In addition, the Agency may, at its sole discretion, set aside assistance for or rank projects that meet important program goals. Assistance will include both loan guarantees and interest credits. Priority projects must compete for set-aside funds. The Agency will announce the priority criteria in an announcement in the Federal Register.

Cathy Glover,  
*Acting Administrator,*  
*Rural Housing Service.*